IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1797 of 2005
With
CIVIL APPLICATION No. 12946 of 2005
With
LETTERS PATENT APPEAL No. 63 of 2006
With
CIVIL APPLICATION No. 165 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTIBHAI UKHAJI BHATI THRO P.O.A. - Appellant(s)
Versus
GOVERNMENT OF GUJARAT THRO' SECRETARY & 1 - Respondent(s)

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Appearance :
MR KM SHETH for Appellant(s) : 1,
MS DS PANDIT AGP for Respondent(s) : 1 -2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 21/03/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Admit. Ms DS Pandit, learned AGP waives service of notice of admission of the appeals. In the facts and circumstances of the case, the appeals are taken up for final disposal today.

2. In compliance with the order dated 28.12.2005, affidavit-in-reply dated 6.3.2006 is filed by the Collector, Banaskantha district to justify determination of the market value at Rs.170/- per sq.mtr. for the purpose of fixing the premium amount.

3. There is no dispute about the fact that the appellant-petitioners are the owners of agricultural lands in question and that the appellants have applied for permission to use the land for non-agricultural purpose. In the course of the proceedings for grant of such permission, the Collector determined the market value for fixing premium at the rate of Rs.190/- per sq.mtr.. Aggrieved by the same, the appellants challenged the orders before the learned Single Judge. The learned Single Judge allowed those petitions and directed the Government to pass fresh orders on merits after giving the appellants an opportunity of being heard. Thereafter the State Government passed fresh order dated 23.6.2005 determining the market value of the land at Rs.170 per sq.mtr. and accordingly directed the appellants to pay premium on that basis. The

appellants, therefore, moved the learned Single Judge by filing fresh petitions which came to be dismissed on the ground that the petitioners were given an opportunity of being heard and, therefore, the orders passed were just and proper as the authorities had taken into account the comparable sale instances. That is why the appellants are in appeal before us.

4. It transpires from the affidavit-in reply dated 6.3.2006 that the authority had taken into consideration sale instances for nearby lands like Revenue Survey No.201 paiki which parcels of land were sold between 1998 and 2003 at rates ranging from Rs.80 per sq.mtr. to Rs.168 per sq.mtr.. However, it is clear that the parcels of land which were sold during the said period were residential plots and admeasured only about 148.64 sq.mtr. each i.e. they were very small parcels of residential lands whereas the lands in question which are the subject matter of the present appeals are agricultural lands admeasuring 3 acres 32 gunthas (15397 sq.mtrs.) and 4 acres and 28 gunthas (19037 sq.mtrs.) in the two appeals.

5. As per the well-established principle for determining the market value of lands, the value of smaller residential lands is bound to be higher than the value of the larger parcels of agricultural lands and the authorities seem to have lost sight of this

well-settled important principle.

6. Thus in view of the fact that the authorities have taken into consideration the sale price of smaller parcels of residential lands and applied the said price for the purpose of calculating the market value of much larger parcels of agricultural lands, the impugned orders determining the market value of the lands at Rs.170 per sq.mtr. are quashed and set aside. The matters will, therefore, go back to the concerned authority for passing fresh orders in accordance with law in light of the observations made in this judgment and after considering the representations, if any, which the appellants may make within two weeks from today. It will be open to the appellants to submit their representations on the basis of the sale instances indicated in the statement at Annexure RI to the reply affidavit (item Nos.1 to 5, 8 and 9) and such other material which the appellants may choose to submit before the authority i.e. respondent No.1. The authority shall decide the representations within three months from the date of receipt of the representations.

7. The appeals are accordingly allowed to the aforesaid extent with no order as to costs.

8. Since the appeals are disposed of, the civil applications also accordingly stand disposed of.

Direct service is permitted.

(M.S. SHAH, J.) (SHARAD D DAVE, J.)

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